REMARKS

This paper responds to the non-final Office Action dated September 6, 2005 rejection all of the pending claims, Claims 1-23 and 28-31. The Applicant has amended the claims to address the rejections and has placed the application in a condition for allowance.

In accord with 35 U.S.C. 132(a), the Examiner objected to the amendment of Claims 5 and 8 in that the Examiner judged the claims to introduce new matter into the disclosure of the invention. The Claims 5 and 8 have been suitably amended to remove the language that the Examiner found to be new matter.

The Examiner went on to object, under 35 U.S.C. 101, to Claims 1-8,15-18,23,31, on the grounds that the claimed invention is directed to non-statutory subject matter. The objection stated that the claims do not require or recite the use of any technology, or anything that would be considered to be within the technological arts. The independent claims, 1, 15, and 23 have been amended to include at least the limitation of recording a song into a database and retrieving the song in accord with a structured request. As such, the claims now reflect statutory matter and are not now objectionable on that basis.

The Office Action went on to reject Claims 19-22 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Office Action asserted that the Claims in question recite a "means for generating the personalized song according to the request" which includes people. The method as amended reflects the formulation of requesting the artist to modify the source song and then to receive from the artist the modified song specifically avoiding claiming the artist as a part of the invention.

The objections under 35 U.S.C. 112 echo those as to "New Matter" and have been resolved accordingly as reported above. For the objections under the second paragraph of 35

BLACK LOWE & GRAHAM PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

U.S.C. 112, especially for Claim 16 wherein the "means for making the songs available for purchase" has been changed to "means for selling." Additionally, in Claim 23, the use of the term "either" has been removed.

Rejections of Claims 1,3, 6-8, 9-14, 19-22, 28-30, under 35 U.S.C. 102(b) as being anticipated by have been addressed by the reference to the Development Center that was present in FIG. 1 and well-described in the specification. (See, as to use of the database, page 5, lines 14 through 26; page 5 line 33 through page 6, line 15).

The Applicant respectfully disagrees with the Examiner as to the assertion that a "database can be interpreted to be the CDs with stored songs." The database clearly allows retrieval from the database as taught and claimed. Stored CDs alone will not suffice for that purpose. The Examiner cannot assume that retrieving other songs and modifying them according to a choice of tempo, genre, instrumentation, or event is included in the cited art without specific teaching of such processes in the cited reference.

Claims 15-22, are rejected under 35 U.S.C. 102(b) as being anticipated by Clynes (5590282). Clynes requires delivery by means of a computer system and interaction between a subscriber's post 12, 13, 14 (FIG. 1) and a Central Computer which includes a digital calculator (Col. 3, lines 8-11). The claimed invention in Claims 15-22, does not have either of the subscriber's posts or the digital calculator and is therefore not anticipated by Clynes.

BLACK LOWE & GRAHAM PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

CONCLUSION

The Applicants thank the Examiner for a thoughtful and thorough examination of the claims. The Applicants are grateful for the Examiner's insights. In the event that any of the claims as amended or the arguments set forth herein raise any questions, the Applicants request that the Examiner contact the Applicant's attorney of record, the undersigned.

Respectfully submitted,

BLACK LOWE & GRAHAM PLLC

Mark L. Lorbiecki
Registration No. 45,643
Direct Dial: 206.903.1800

MAIL CERTIFICATE

I hereby certify that this communication is being deposited with the United States Postal Service via first class mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

1/6/06
Date of Deposit

Michelle V. Carman

BLACK LOWE & GRAHAM PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301